



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes CITY COUNCIL

R. Steve Tumlin, Mayor
Annette Paige Lewis, Ward 1
Griffin "Grif" L. Chalfant, Jr., Ward 2
Johnny Sinclair, Ward 3
Vacant, Ward 4
Rev. Anthony C. Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, June 13, 2012

7:00 PM

Council Chamber

Presiding: R. Steve Tumlin, Mayor
Present: Annette Lewis, Grif Chalfant, Johnny Sinclair,
Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

Also Present:
William F. Bruton, Jr. City Manager
Douglas R. Haynie, City Attorney
Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor R. Steve Tumlin called the meeting to order at 7:03 p.m.

INVOCATION:

Mayor Tumlin called upon Council member Goldstein to give the invocation.

PLEDGE OF ALLEGIANCE:

Mayor Tumlin asked everyone to remain standing for the pledge of allegiance.

PRESENTATIONS:

PROCLAMATIONS:

20120585

Proclamation

Proclamation presented to Mr. Douglas Frey and Mr. Jim Divitale, author of "Marietta, the GEM City of Georgia" and the Cobb Landmarks and Historical Society in recognition of their outstanding efforts with the publication of this book.

Presented

**ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE
MAYOR, COUNCIL AND/OR CITY MANAGER:**

SCHEDULED APPEARANCES:

20120498 Scheduled Appearance - Kristen Picken

Resident at 413 Talcott Circle (Ward 4). Speaking to council about "backyard poultry."

Present

UNSCHEDULED APPEARANCES:

Larry Willis, who resides at 60 Oakmont, spoke regarding the ending FY2012 budget and the FY2013 budget to be approved on the consent agenda.

William Llop, who resides at 310 Glenlake Drive, Sandy Springs, spoke regarding his intention on running for Congress as the 11th District Representative.

CONSENT AGENDA:

Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Mayor Tumlin left the dais during this portion of the meeting.

Mayor Pro tem, Grif Chalfant, called upon Council member Johnny Sinclair, to preside over this portion of the meeting. Council member Sinclair briefly explained the consent agenda process. The following amendments were made to the consent agenda:

-under City Council Appointment: Agenda item 20120533 should show Council member Goldstein abstaining.

-under Finance/Investment: Agenda item 20120456 was added to the consent agenda and should show Council member Goldstein abstaining. Agenda item 20120524 was added to the consent agenda.

-under Public Works: Agenda item 20110249 was added to the consent agenda to be removed from the agenda. Agenda item 20120251 was added to the consent agenda and should show Council members Lewis and Goldstein voting against.

-under Other Business: Agenda item 20120142 was added to the consent agenda with a motion to table this matter until the January 9, 2013 Council meeting, at which time the applicant would be required to submit all executed documents to the City by December 31, 2012. Agenda item 20120496 was added to the consent agenda with a motion to table this matter until the July 11, 2012 Council meeting. Agenda item 20120541 was added to the consent agenda with a motion to approve with the following amendment: The fifth item under the variances and stipulations related to the existing billboard located at 9 Cobb Parkway North should read,

"It is stipulated that the existing billboard located at 9 Cobb Parkway North shall be removed within 60 days (or sooner) of May 31, 2016 (date of the current lease expiration between the property owner and CBS Outdoor Inc.) at the expense of the property owner."

City Attorney Douglas Haynie opened the public hearing for those items on the consent agenda requiring a public hearing. Seeing no one wishing to speak, the public hearing was closed.

A motion was made by Council member Coleman, seconded by Council member Chalfant, to approve the consent agenda as modified. The motion carried by the following vote:

*Vote: 6 - 0 - 0 Approved
with the following exceptions:*

*Council member Goldstein abstaining on agenda items 20120533 and 20120456.
Council members Lewis and Goldstein voting against agenda item 20120251.*

MINUTES:

*** 20120535 Regular Meeting - May 9, 2012**

Review and approval of the May 9, 2012 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0 Approved

*** 20120542 Special Meeting - May 30, 2012**

Review and approval of the May 30, 2012 special meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0 Approved

MAYOR'S APPOINTMENTS:

CITY COUNCIL APPOINTMENTS:

*** 20120515 Construction Board of Adjustment and Appeals (Ward 1)**

Motion to reappoint Susan Grant to the Construction Board of Adjustment and Appeals for a five (5) year term expiring May 10, 2017.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0 Approved

* **20120516** **Ethics Committee Council Appointment**

Motion appointing Betty Hunter to the Ethics Committee for a two (2) year term expiring June 13, 2014.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0 **Approved**

*** 20120533 Cobb-Marietta Water Authority Appointment**

Motion appointing Grif Chalfant to the Cobb-Marietta Water Authority for a term of four years commencing August 14, 2012 and expiring August 14, 2016.

This Matter was Approved on the Consent Agenda.

Vote: 5 - 0 - 1 **Approved**

Abstaining: Philip M. Goldstein

ORDINANCES:

20120278 Z2012-02 Racetrac Petroleum, Inc. 1400 Powder Springs Road

Z2012-02 [REZONING] RACETRAC PETROLEUM, INC. request rezoning for a portion of the property located in Land Lot 02600, District 19, Parcel 0030, 2nd Section, Marietta, Cobb County, Georgia and being known as 1400 Powder Springs Road from R-2 (Single Family Residential 2 units/acre) to CRC (Community Retail Commercial). Ward 2.

Council member Goldstein disclosed that he and/or entities that he owns or is affiliated with has used and/or use the attorney, Kevin Moore, from time to time.

Mayor Tumlin opened the public hearing. City Attorney Douglas Haynie explained the rules of order and swore in those wishing to speak.

Kevin Moore, attorney for the applicant, requested rezoning for property located at 1400 Powder Springs Street from R-2 (Single Family Residential - 2 units/acre) to CRC (Community Retail Commercial), to be developed for a RaceTrac gas station. Mr. Moore also presented an amended letter of stipulations dated June 12, 2012, in which the applicant would agree to place the four acres located adjacent to the rear of the subject property in a conservation easement to permanently preserve the area.

Several Cobb County residents from the adjacent neighborhood spoke in opposition to the proposed development. Residents speaking in opposition included:

Richard Calhoun, attorney for several residents of the Elizabeth Acres subdivision.

Ron and Janice Ridgeway, who resides at 1027 Wilburn Drive.

Matt Rogers, who resides at 1742 Kimberly

Alison Lanier, who resides at 1469 Mel Court.

*Elaine Duffus, who resides at 1080 Murray Circle.
Kurt Brittan, 1150 Murray Circle.*

In rebuttal, Mr. Moore further explained the intent of a conservation easement and the intent of the applicant to preserve the area as green space, not to be developed in the future.

The public hearing was closed.

In depth discussion was held by Council.

Motion to deny the rezoning request.

The motion was made by Council member King, seconded by Council member Coleman, that this matter be Denied. The motion carried by the following vote:

Vote: 5 - 1 - 0 Denied
Voting Against: Philip M. Goldstein

RESOLUTIONS:

CITY ATTORNEY'S REPORT:

CITY MANAGER'S REPORT:

MAYOR'S REPORT:

COMMITTEE REPORTS:

1. Economic/Community Development: Grif Chalfant, Chairperson

- * **20120479 2012 CDBG Sub-Recipient Agreement**
- Resolution authorizing the execution of the FY12 CDBG Sub-Recipient Agreement with Cobb County allowing the receipt of \$565,979 in US Department of Housing and Urban Development Block Grant Funds.
- This Matter was Approved on the Consent Agenda.**
- Vote: 6 - 0 – 0 Approved**
-
- * **20120480 2012 HOME Sub-Recipient Agreement**
- Resolution approving the FFY'2012 HOME Program Sub-recipient Agreement with Cobb County and receive \$198,378 in US Department of Housing and Urban Development HOME funds including the federally required set aside for CHDO.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0

Approved

2. Finance/Investment: Annette Lewis, Chairperson

* **20120455**

Adoption of recommended Budget for FY2013

[Ord 7594](#)

Approval of an Ordinance adopting an Annual Budget for the fiscal year beginning July 1, 2012, and ending June 30, 2013, for the various funds of the City of Marietta and enacting the tentative Ad Valorem tax levies for said fiscal year for support of the City of Marietta governmental operations and other public purposes, and debt service obligations.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0

Approved

* **20120456**

Welcome Center Contract

Motion to approve request to allocate hotel/motel and 3% auto rental tax funds according to the FY2013 Welcome Center Contract.

Council member Goldstein disclosed that he is the owner of and a general manager for the Herbert S. Goldstein Family Limited Partnership that owns the Earl Strand Theater at 115-119 North Park Square, Marietta GA. The tenant is Friends of the Strand, Inc. The tenant has an agreement with the Atlantic Lyric Theater, Inc., to use the facility. Council member Goldstein abstains on and will not participate on allocation of funds to the above two (2) entities.

Council member Goldstein is or has been a member of: Friends of Brumby Hall, Inc., Cobb Landmarks and Historical Society, Inc., Marietta-Cobb Museum of Art; and the Marietta Museum of History. He is also the Council's appointed member serving on the board of the Marietta Welcome Center and Visitors Bureau, Inc.

Mayor Tumlin has served as a director, but is currently not serving, of the following organizations being considered for sponsorships: Marietta-Cobb Museum of Art; Marietta Museum of History, Inc.; and Friends of the Strand, Inc. Additionally, Mayor Tumlin has provided legal services to Friends of the Strand, Inc. and accounting services to Marietta Museum of History, Inc. Mayor Tumlin has been/is a Member of Brumby Hall, Inc. and Cobb Landmarks & Historical Society.

Council member Sinclair disclosed that he is a past Chairman of the Board of the Art Museum, member of Cobb Landmarks, and has been a member of the Welcome Center and the Museum of the History.

This Matter was Approved on the Consent Agenda.

Vote: 5 - 0 – 1 Approved
Abstaining: Philip M. Goldstein

* **20120474 Appropriation of FY2012 Surplus Funds**

[Ord 7591](#)

Approval of an Ordinance amending the Fiscal Year 2012 budget to appropriate surplus revenue to cover the cost of prisoner housing expenses, fuel and capital purchases.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

* **20120484 Appropriation of funds for purchase of police transport van replacement**

[Ord 7592](#)

Approval of an Ordinance amending the Fiscal Year 2012 Budget to receive \$6,349 in insurance claim reimbursement and \$24,041 in condemned funds and appropriate these amounts to replace a totaled prisoner transport van and emergency equipment for the Police Department.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

* **20120524 Approval to proceed with new contract for the annual audit**

Motion to proceed with new contract with Mauldin and Jenkins, LLC for the annual audit.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

3. Judicial/Legislative: Philip M. Goldstein, Chairperson

* **20120488 Appointment of Open Records Officer**

Motion appointing the City Clerk as the Open Records Officer.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0 Approved

4. Parks, Recreation and Tourism: Johnny Sinclair, Chairperson

* **20120495 Renaming of Hickory Hills Park**

Adoption of a Resolution renaming Hickory Hills Park to Steve and Virginia Tumlin Park at Hickory Hills.

Public hearing held during the consent agenda.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0 Approved

*** 20120514 Custer Park Operating Agreement**

Motion adopting an operating agreement with Metro Atlanta YMCA through the N.E. Cobb Branch for the operation of Custer Park.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0 Approved

5. Personnel/Insurance: Grif Chalfant, Vice Chairperson

*** 20120483 Position allocation and compensation plan**

[Ord 7593](#)

Approval of an Ordinance adopting the position allocation chart for the City of Marietta and the Board of Lights and Water and approval of the City of Marietta/BLW position classification and compensation plans for the period of July 1, 2012 to June 30, 2013.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 - 0 Approved

6. Public Safety Committee: Anthony Coleman, Chairperson

7. Public Works Committee: Jim King, Chairperson

*** 20110249 Wilson Drive**

Approval of a Resolution regarding the naming of Wilson Drive.

PUBLIC HEARING

This Matter was Removed on the Consent Agenda.

Vote: 6 - 0 - 0 Removed

*** 20120251 Speed Hump Policy**

Motion to approve Speed Hump Policy modifications.

This Matter was Approved on the Consent Agenda.

Vote: 4 - 2 - 0 Approved

Voting Against: Annette Lewis and Philip M. Goldstein

APPEARANCES:**OTHER BUSINESS:****20120141 V2012-11 Roy W. Mertz 2265 Kingston Court**

V2012-11 [VARIANCE] ROY W. MERTZ request variance for property located in Land Lot 07260, District 17, Parcel 0010 and being known as 2265 Kingston Court. Variance to allow abandoned signs to remain. Ward 7.

Council member Chalfant disclosed that he has employed the engineer, Wayne Proctor, at various times.

Council member Goldstein disclosed that he has used the engineer, Wayne Proctor, in the past; however, has no current business dealings with him.

Motion to table until the July 11, 2012 Council meeting at the request of the applicant.

A motion was made by Council member Goldstein, seconded by Council member Chalfant, that this matter be Tabled. The motion carried by the following vote:

Vote: 6 - 0 - 0

Tabled

*** 20120142 V2012-12 Michael McDonald - Pavilion Development 2195 Cobb Parkway South**

V2012-12 [VARIANCE] MICHAEL MCDONALD (PAVILION DEVELOPMENT) request variance for property located in Land Lot 08050, District 17, Parcel 0160 and being known as 2195 Cobb Parkway South. Variance to allow a general advertising sign outside of the area within 100 feet of the right of way of Interstate 75.; Variance to waive the requirement that a general advertising sign be regulated as a principal use; Variance to allow a general advertising sign to be located within 1,000 foot radius of another general advertising sign; Variance to reduce the side setback for a general advertising sign support structure from 15' to 11'; Variance to reduce the side setback for a general advertising sign face from 11.25' to 7'; Variance to reduce the front setback for a general advertising sign face from 30' to 17'; Variance to allow a general advertising sign be located on a lot upon which a building and signage is located; Variance to allow a general advertising sign be located closer to a permanent structure than the distance that is equal to the height of the sign. Ward 1.

Motion to table this matter until the January 9, 2013 Council meeting, at which time the applicant would be required to submit all executed documents to the City by December 31, 2012.

This Matter was Tabled on the Consent Agenda.

Vote: 6 - 0 - 0

Tabled

* **20120496** **V2012-20 David A. Jackson for Cobb County (Mobility Center) 680 South Marietta Parkway; 505 South Fairground Street; 431 Commerce Park Drive**

Motion to approve variances for property located in Land Lot 03610, District 17, Parcels 0310, 0340, & 0280 and being known as 680 S. Marietta Parkway, 505 S. Fairground Street, and 431 Commerce Park Drive. These variances shall be for the current proposed development of the property for a Cobb County Mobility Center only, and shall be discontinued upon the redevelopment of the site (subject to Section 706 Nonconforming Uses).

Motion to table this matter until the July 11, 2012 Council meeting.

This Matter was Tabled on the Consent Agenda.

Vote: 6 - 0 – 0

Tabled

* **20120541** **V2012-22 [VARIANCE] FIFTH THIRD BANK [MATTHEW VAN DYKE (CORE STATES GROUP)] request variances for property located in Land Lots 12110 & 12120, District 16, Parcels 1400 & 0020 and being known as 9 Cobb Parkway N. and 1017 Roswell Street.**

- Variance to increase the allowable height for a single freestanding sign only along the Cobb Parkway frontage of 9 Cobb Parkway North within Tier A from 8' to 15';
- Variance to increase the allowable sign face for a single freestanding sign only along the Cobb Parkway frontage of 9 Cobb Parkway North within Tier A from 60 s.f. to 100 s.f.;
- Variances and stipulation related to two proposed shared signs at 9 Cobb Parkway North and 1017 Roswell St.:
 - Variance to allow a general advertising sign and two off-premise signs outside of the area within 100 feet of the right of way of Interstate 75;
 - Variance to waive the requirement that a general advertising sign and off-premise sign be regulated as a principal use;
 - Variance to waive the requirement that no general advertising sign or off-premise sign shall be located within 1,000 foot radius of another general advertising or off-premise sign;
 - Variance to allow a general advertising sign and off-premise signs be located on a lot which a building and signage is located;
 - It is stipulated that the sharing of space on these signs shall only apply to businesses located at 9 Cobb Parkway North and 1017 Roswell St.;
- Variances and stipulations related to the existing billboard located at 9 Cobb Parkway North:
 - Variance to allow a general advertising sign and two off-premise signs outside of the area within 100 feet of the right of way of Interstate 75;
 - Variance to waive the requirement that a general advertising sign and off-premise sign be regulated as a principal use;
 - Variance to waive the requirement that no general advertising sign or off-premise sign shall be located within 1,000 foot radius of another general advertising or off-premise sign;

- Variance to allow a general advertising sign and off-premise signs be located on a lot which a building and signage is located;
- It is stipulated that the existing billboard located at 9 Cobb Parkway North shall be removed within 60 days (or sooner) of May 31, 2016 (date of the current lease expiration between the property owner and CBS Outdoor Inc.) at the expense of the applicant and/or applicable party other than the City of Marietta;
- All variances granted for the existing billboard shall expire once the billboard is removed.
- Variance to waive the optional site design elements;
- Variance to eliminate the maximum 16' setback;
- Variance to eliminate the requirement that any building abutting a public right-of-way be oriented to the street;
- Variance to waive the 6' brick sidewalk along Cobb Parkway North and Key Drive and require a 5 foot paved concrete sidewalk along Cobb Parkway North and Key Drive as close as practicable to the 10 foot landscape strip. The installation of the sidewalk along Cobb Parkway North shall be subject to the approval of Georgia Dept. of Transportation;
- Variance to eliminate the requirement that drive-through service window, bay, or lane and all queuing lanes be located as far as practicable from any right-of-way or pedestrian route;
- Variance to allow the proposed future streetscape being installed by the City to satisfy the requirement for landscape screening for drive-through facilities within 50' of a pedestrian route.

Motion to approve with the following amendment:

The fifth item under the variances and stipulations related to the existing billboard located at 9 Cobb Parkway North should read, "It is stipulated that the existing billboard located at 9 Cobb Parkway North shall be removed within 60 days (or sooner) of May 31, 2016 (date of the current lease expiration between the property owner and CBS Outdoor Inc.) at the expense of the property owner."

This Matter was Approved as Amended on the Consent Agenda.

Vote: 6 - 0 - 0

Approved as Amended

*** 20120529**

Request for a Variance from the Law Firm of Brock Clay concerning underground utilities

The request for an underground utility variances from city code sections 5-4-040 and 5-4-160 to allow an aerial communications cable on private property and city right of way from 49 Atlanta Street to 61 Atlanta Street, filed by Brock, Clay, Calhoun & Rogers, LLC is hereby granted with the following conditions and stipulations:

1. Compliance in full with all terms and conditions set forth in Marietta City Code Section 5-4-040.

2. Compliance in full with all terms and conditions set forth in Marietta City Code Section 5-4-160.
3. Compliance in full with all other Marietta City Codes applicable to this application.
4. The removal of any and all telecommunications cables, facilities or equipment upon the earlier of ninety (90) day notice from the City of Marietta to remove same or the City of Marietta relocating adjoining facilities underground.
5. The applicant obtaining the proper approval and agreement from the Board of Lights and Water for attachment to any pole or facility owned by the Board of Lights and Water.
6. The obtaining of any and all necessary permits or licenses in order to operate within the right-of-way of the City of Marietta.
7. The applicant shall fully indemnify the City of Marietta and the Board of Lights and Water from any and all liability, damages, costs of any type related to this variance approval.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0

Approved

* 20120536

BLW Actions of the June 11, 2012

Review and approval of the June 11, 2012 actions and minutes of the Marietta Board of Lights and Water.

This Matter was Approved on the Consent Agenda.

Vote: 6 - 0 – 0

Approved

UNSCHEDULED APPEARANCES:

Larry Willis, who resides at 60 Oakmont, spoke again regarding the ending FY2012 budget and the FY2013 budget that was approved on the consent agenda.

ADJOURNMENT:

The meeting was adjourned at 8:38 p.m.

Date Approved: July 11, 2012

R. Steve Tumlin, Mayor

Attest: _____
Stephanie Guy, City Clerk